

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

JIMMY JUNIOR RODRIGUEZ

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1474 EDA 2012

Appeal from the Order Entered May 14, 2012
In the Court of Common Pleas of Monroe County
Criminal Division at No(s): CP-45-CR-0002984-2011

BEFORE: PANELLA, J., ALLEN, J., and PLATT, J.*

MEMORANDUM BY PANELLA, J.

FILED MAY 17, 2013

The Commonwealth of Pennsylvania appeals the order entered May 14, 2012, by the Honorable Jennifer H. Sibum, Court of Common Pleas of Monroe County, which granted Appellee, Jimmy Junior Rodriguez's Motion to Enforce Agreement for Disposition. We affirm.

Rodriguez and two co-defendants were charged in Monroe County with theft by receiving stolen property¹ and criminal conspiracy to commit receiving stolen property,² arising from the recovery of a vehicle in Monroe County that had been stolen from neighboring Lycoming County. Prior to the preliminary hearing, Rodriguez and Assistant District Attorney Jeremy

* Retired Senior Judge assigned to the Superior Court.

¹ 18 PA.CON.S.TAT.ANN. § 3925(a).

² 18 PA.CON.S.TAT.ANN. § 903(a)(1).

Bolles reached an agreement whereby Rodriguez would waive his preliminary hearing and agree to testify against his codefendants, in exchange for which the Commonwealth agreed to a reduction of charges to a misdemeanor level theft and a recommendation from the District Attorney for Rodriguez's admission into the Accelerated Rehabilitative Disposition ("ARD") program.³ N.T., Hearing, 5/14/12, at 3. Rodriguez's attorney, Janet Jackson, Esquire, confirmed the agreement in writing by letter dated January 14, 2011.

Subsequent thereto, Rodriguez and his co-defendants were charged in Lycoming County with theft and conspiracy offenses arising from the same incident which led to the charges filed in Monroe County. On January 18, 2012, Rodriguez appeared to testify at the preliminary hearing of his co-defendants in Monroe County in accordance with the Commonwealth's subpoena and the disposition agreement. The hearings were ultimately waived and Rodriguez was informed that the charges were to be transferred to Lycoming County.

On March 1, 2012, Rodriguez filed a Motion to Enforce Agreement for Disposition. Following a hearing on May 14, 2012, the trial court granted

³ ARD "is a pre-trial disposition of certain cases, in which the attorney for the Commonwealth agrees to suspend prosecution for an agreed upon period of time in exchange for the defendant's successful participation in a rehabilitation program, the content of which is to be determined by the court and applicable statutes." **Commonwealth v. LaBenne**, 21 A.3d 1287, 1291 n.6 (Pa. Super. 2011) (citation omitted).

Rodriguez's request for admission to the ARD program. The Commonwealth filed this timely appeal on May 16, 2012.

The Commonwealth raises the following issues for our review:

- I. Was the trial court proper in granting defendant's Motion to Enforce ARD when the Commonwealth intended to nolle prosequi the entire criminal case?
- II. Was the trial court proper in granting defendant's Motion to Enforce ARD when the Commonwealth requested to transfer the criminal case to a neighboring county?
- III. Was the trial court proper in granting defendant's Motion to Enforce ARD when the District Attorney has the sole discretion in moving for admission of a defendant into the ARD program?

Commonwealth's Brief, at 4 (all-capitalized typeface removed).

It is well settled that district attorneys have the sole discretion in moving for admission of a defendant into ARD:

[T]he decision to submit the case for ARD rests in the sound discretion of the district attorney, and absent an abuse of that discretion involving some criteria for admission to ARD wholly, patently and without doubt *unrelated* to the protection of society and/or the likelihood of a person's success in rehabilitation, such as race, religion or other such obviously prohibited considerations, the attorney for the Commonwealth must be free to submit a case or not submit it for ARD consideration based on his view of what is most beneficial for society and the offender. **Commonwealth v. Corrigan**, 992 A.2d 126, 130 (Pa.Super.2010) (quoting **Commonwealth v. Lutz**, 508 Pa. 297, 310, 495 A.2d 928, 935 (1985) (emphasis in original)). Once the Commonwealth denies a defendant admission into ARD, "the trial court's role is limited to whether the Commonwealth abused its discretion." **Commonwealth v. Sohnleitner**, 884 A.2d 307, 313 (Pa.Super.2005) (citation omitted). This Court has emphasized that "[t]he Commonwealth does not have the burden of proving the absence of abuse of discretion; rather, the petitioner has the burden of proving the

Commonwealth's denial of his request was based on prohibited reasons." *Id.* at 314.

LaBenne, 21 A.3d at 1291.

Herein, the trial court noted its reasons for granting Rodriguez's request for admission to the ARD program as follows:

I completely agree that the Commonwealth needs to be able to revoke a plea if a Defendant misleads the Commonwealth as to his level of his involvement and after the offer of the deal the Commonwealth learns that his involvement is much greater or more sinister. I agree that if the Commonwealth learns of additional facts unbeknownst to it at the time that the plea was offered that you need to be able to revoke your plea, absolutely, but that's not what we have here.

We have a plea that was offered and that the Defendant lived up to. Now, although he didn't have to actually physically testify, he complied with his obligation to show up and to be prepared to testify against his co-Defendants. The fact that the DA's office then disapproved the filing of the charges, that's outside of his control.

N.T., Hearing, 5/14/12, at 9-10.

We agree with the trial court's determination. This case is unique in that here, unlike most cases in which the district attorney's decision not to submit a case to ARD is challenged, the Commonwealth initially agreed to move Rodriguez's charges to ARD. Although the Commonwealth later attempted to revoke this agreement, it was unable to offer any reason for doing so. Based upon the initial agreement to recommend ARD and the Commonwealth's failure to state a reason for subsequently revoking the agreement or any other additional facts or change in circumstance to justify its decision, we are constrained to agree with the trial court that the

Commonwealth abused its discretion in belatedly rejecting Rodriguez's admission to the ARD program.

We similarly reject the Commonwealth's contentions that the trial court erroneously granted Rodriguez's motion because it intended to either *nolle prosequi* the charges or transfer the charges to Lycoming County. The record reveals no indication that the Commonwealth had formally requested to *nolle prosequi* the charges or provided a basis to do so prior to the trial court's decision to grant Rodriguez's motion to enforce the ARD agreement.⁴ Further, the Commonwealth notably does not contend that venue was improper in Monroe County, merely that it intended to transfer the charges to Lycoming County where the district attorney was purportedly opposed to offering Rodriguez admission to the ARD program. N.T., Hearing, 5/14/12, at 6-7. Based on the foregoing, we agree with the trial court that the Commonwealth failed to present a sufficient basis to renege its ARD agreement with Rodriguez. Accordingly, we affirm the trial court's order granting Rodriguez admission to the ARD program.

Order affirmed. Jurisdiction relinquished.

⁴ Although the Commonwealth references an in chambers discussion with the trial court during which this option was presumably discussed, the transcript is devoid of the substance of this meeting. The hearing transcript merely indicates that the Commonwealth indicated its wish to transfer the charges to Lycoming County. N.T., Hearing, 5/14/12, at 6-7.

J-A06005-13

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 5/17/2013